



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel KCS

DATE: July 26, 1999

SUBJECT: 99NF-11- First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE ☒
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒
24 Hour TALLY VOTE ☐
24 Hour NO OBJECTION ☐
INFORMATION ☐

DISTRIBUTION

COMPLIANCE ☒

Open/Closed Letters ☐
MUR ☐
DSP ☐

STATUS SHEETS ☐
Enforcement ☐
Litigation ☐
PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

FEDERAL ELECTION COMMISSION

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JUL 26 4 14 PM '99

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RAD REFERRAL: 99NF-11

DATE ACTIVATED: 05/28/99

STAFF MEMBER: Dominique Dillenseger
Lisa A. Davis

SOURCE: Internally Generated

RESPONDENTS: Mid-America Conservative Political Action Committee
Leroy Dale Corey, Treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(a)(4)(A)(iii)
2 U.S.C. § 437g(a)(11)
11 C.F.R. § 104.5(c)(1)(iii)(A)

INTERNAL REPORTS CHECKED: Disclosure Reports
Referral Materials

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

The Reports Analysis Division ("RAD") referred the Mid-America Conservative Political Action Committee ("MACPAC"), and Leroy Dale Corey, as treasurer, to the Office of General Counsel (the "Office") on May 18, 1999. The basis of the RAD referral is the failure of MACPAC to file its 1998, 30 Day Post-General Report of Receipts and Disbursements, covering

the period from October 15, 1998, through December 3, 1998,¹ within thirty calendar days from the date of the Non-Filer Notice.

MACPAC and Mr. Corey, the treasurer, also are involved in a litigation matter from 1992, in which the U.S. District Court for the Northern District of Iowa ordered MACPAC and Mr. Corey to pay a \$10,000 civil penalty and "permanently enjoined" them from "failing to file timely quarterly, mid-year, year-end, and post election reports."

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that all political committees other than authorized committees of a candidate shall file a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be completed as of the 20th day after such general election. 2 U.S.C. § 434(a)(4)(A)(iii).

Under 2 U.S.C. § 437g(a)(11), "if the Commission determines after an investigation that any person has violated an order of the court entered in a proceeding brought . . . [to enforce the Act], it may petition the court for an order to hold such person in civil contempt . . ."

II. BACKGROUND

MACPAC is a political committee that is not an authorized committee of a candidate.

Leroy Dale Corey is the treasurer of MACPAC.

¹ In addition to failing to file the 1998, 30 Day Post-General Report, MACPAC has also filed an incomplete 1998 Year-End Report. The 1998 Year-End Report was supposed to cover the period from November 24, 1998, through December 31, 1998, but MACPAC's 1998 Year-End Report only covered the period from December 4, 1998, through December 31, 1998. Therefore, it appears that MACPAC has not filed a report to disclose the financial activity from October 15, 1998, through December 3, 1998.

A. Reports Analysis Division Referral

The RAD notified MACPAC of the filing dates for the 1998, 30 Day Post General Report by Prior Notices on three separate occasions. The Prior Notices were mailed, respectively, to MACPAC on December 29, 1997, September 30, 1998, and November 5, 1998. All the Prior Notices informed MACPAC that the 30 Day Post General Report was due on December 3, 1998. Additionally, a Non-Filer Notice was sent to MACPAC *via* mailgram on December 28, 1998. The RAD analyst called MACPAC on January 21, 1999, and left a message for the treasurer, stating that MACPAC had not filed the 1998, 30 Day Post General Report. On March 21, 1999, the RAD analyst called MACPAC and was told that the treasurer was not available. A message was left for the treasurer to call the RAD analyst concerning MACPAC's report. To date, the treasurer has not returned these calls and MACPAC has not filed its 1998, 30 Day Post-General Report.

C. Litigation

MACPAC and Leroy Dale Corey, its treasurer, are also involved in a litigation matter with the Commission. On October 30, 1992, the U.S. District Court for the Northern District of Iowa ordered MACPAC and Mr. Corey to pay a \$10,000 civil penalty for failing to file several reports on time. The court also "permanently enjoined" MACPAC and Mr. Corey from "failing to file timely quarterly, mid-year, year-end, and post-election reports." MACPAC and Mr. Corey were notified that they might be held in contempt if they did not continue to make payments on the civil penalty. Counsel replied that MACPAC was doing its best to make payments. A Final Order in Garnishment was issued by the district court on February 21, 1996. When MACPAC's bank account was garnished only ten dollars (\$10.00) was received as a payment. However, MACPAC's reported financial activity during 1996 suggests that funds may have been transferred to other accounts. To date, there still remains a balance of \$1,440 on the \$10,000 civil penalty, excluding accrued interest. The last payment received from MACPAC was in April 1996.

III. DISCUSSION

For RAD Referrals involving violations such as failure to file or late filing of disclosure reports, this Office would normally recommend that the Commission open a MUR, find reason to believe, and offer to enter into pre-probable cause conciliation with a conciliation agreement and payment of a civil penalty.

This Office, however, does not recommend this course of action here because MACPAC's failure to file its 1998, 30 Day Post-General Report may also be a violation of the court order permanently enjoining MACPAC and Leroy Dale Corey, its treasurer, from failing to file timely post-election reports. Under 2 U.S.C. § 437g(a)(11), the Commission may petition

the court for an order to hold a person in civil contempt (or in criminal contempt for a knowing and willful violation), if the Commission determines after an investigation that that person violated a court order entered in a proceeding to enforce the Act. Accordingly, this Office recommends that the Commission open a MUR, find reason to believe Mid-America Conservative Political Action Committee and Leroy Dale Corey, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(iii), and notify MACPAC and Mr. Corey that the Commission may initiate civil contempt proceedings in U.S. district court if it determines that they are in violation of the court order. The proposed notification letter to MACPAC and Mr. Corey is attached for the Commission's approval.

IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe Mid-America Conservative Political Action Committee and Leroy Dale Corey, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(iii).
3. Approve the attached Factual and Legal Analysis.
4. Approve the attached notification letter.

Date

7/26/99



Lawrence M. Noble
General Counsel

Attachments:

1. Factual and Legal Analysis
2. Notification letter to MACPAC and Leroy Dale Corey, Treasurer